

आयकर अपीलिय अधीकरण, न्यायपीठ –“C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri P. M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, Judicial Member]

I.T.A. No. 553/Kol/2020
Assessment Year: 2014-15

Martina Cotton Industries (P) Ltd. (PAN: AAFCM9314F)	Vs	Income-tax Officer, Ward-7(1), Kolkata.
Appellant		Respondent

Date of Hearing (Virtual)	31.08.2021
Date of Pronouncement	03.09.2021
For the Appellant	Shri S. M. Surana, AR
For the Respondent	Shri Praveen Kishore, CIT, DR

ORDER

Per Shri A. T. Varkey, JM:

This is an appeal preferred by the assessee against the order of the Ld. CIT(A)-15, Kolkata dated 13.03.2019 for AY 2014-15 .

2. At the outset, the Ld. AR of the assessee Shri S. M. Surana submitted that the assessee has preferred eleven (11) grounds of appeal. However, it is pressing only ground no. 6 and 8. therefore, all other grounds i.e. ground nos. 1 to 5, 7 and 9 to 11 stand dismissed. Ground nos. 6 and 8 read as under:

“6. For that even otherwise the Ld. CIT(A) erred in confirming the action of Ld. Assessing Officer in assessing Rs.31,76,27,900/- as unexplained investments made during the year in spite of the fact that no such investments were made during the year.

8. For that the Ld. CIT(A) erred in confirming the disallowance of Rs.44,933/- u/s. 14A read with Rule 8D of the I. T. Act, 1961.”

3. Ground no. 6 preferred by the assessee is against the action of the Ld. CIT(A) in confirming the addition of Rs.31,76,27,900/- made by the AO u/s. 68 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) which according to the Ld. AR is erroneous. According to Ld. AR, the AO has made the addition on the basis that the assessee had nil investment on 01.04.2013 and since the assessee had investment in unlisted equity of Rs.31,76,27,900/- during the year under consideration, he after perusal of the ITR of the assessee for AYs 2013-14 and 2014-15 observed that the source of

investment in unlisted equity of Rs.31,76,27,900/- is unexplained and, therefore, he was pleased to add the same u/s. 68 of the Act and drew our attention to page no. 3 of the assessment order dated 27.12.2016. However, according to the Ld. AR, the assessee did not make any fresh investment in unlisted equity in this relevant assessment year which can be noted from the Balance Sheet. The Ld. AR drew our attention to page 50 of paper book wherein notes on financial statements for the year ended 31.03.2014 is given. The Ld. AR drew our attention to note no. 5 under the head "non-current investments". The other investments in shares as on 31.03.2013 (i.e. preceding year) is shown as Rs.44.68 cr. whereas the investment in shares as on 31.03.2014 is shown as Rs.31,76,27,900/- and thereafter he drew our attention to page no. 131 of the paper book, which is the ITR filed by the assessee for AY 2014-15 which starts from page 127 to 157 of paper book. The Ld. AR drew our attention to page 131 wherein the assets are shown. The Ld. AR drew our attention therein to the 'non-current investment' shown as Rs.31,76,27,900/-. Thereafter, he drew our attention to page no. 104 of the paper book which is the ITR filed for AY 2013-14 placed at page 100 to 126 of paper book. Drawing our attention to page 104 of paper book wherein the assets 'non-current investments' are shown, it is noted that the assessee had shown an amount of Rs.44,68,00,000/-. Thus from the ITR's filed for the earlier /preceding assessment year, the investment shown in shares was to the tune of Rs.44.68 cr. and in the ITR of AY 2014-15 the total investment in shown has come down to Rs.31,76,27,900/-. We note from the Balance Sheet that as on 31.03.2013 (AY 2013-14) the assessee had shown investment in shares to the tune of Rs.44,68,00,000/- whereas it's investment in shares dropped down in this AY 2014-15 as on 31.03.2014 at Rs.31,76,27,900/-. This fact is corroborated by the ITR filed by the assessee for AY 2013-14 as well as that of AY 2014-15. Having noted these relevant facts we note that AO's observation that he has perused the ITR's of AY 2013-14 is doubtful, since the ITR for assessee shows investment in shares to the tune of Rs. 44.68 crores and not only that AO while considering Section 14A disallowance has recorded that value of investment in shares as on 01.04.2013 as nil, when it is elementary that the closing balance of AY 2013-14 i.e. on 31.03.2013 in this case Rs. 44.68 crores would be the opening balance of AY 2014-15 i.e. on 01.04.2013, so it would be Rs. 44.68 crores. So AO's assertion that he perused the ITR of the assessee for AY 2013-14 is not believable. However since these facts need to be verified, we would like to remand this issue back to the file of the AO for cross verification of this specific fact. For that we set aside the impugned order of the Ld. CIT(A) and remand this issue to the file of the AO

for verification as to whether the assessee had shown investment in shares as on 01.04.2013 as Rs.44,68,00,000/- and it dropped down to Rs.31,76,27,900/- as on 31.03.2014. And if that fact is correct that means the investment in shares are carried forward from the earlier assessment years and then, in that event no addition u/s. 68 of the Act was warranted in the AY 2014-15. For that AO can also verify the ITR's for AY 2013-14 & balance sheet of both years. With the aforesaid observation, we remand this matter back to the file of the AO for the limited purpose of verification and to decide in accordance to law. This ground of appeal of assessee is allowed for statistical purposes.

4. Ground no. 8 is against the action of the Ld. CIT(A) in confirming the disallowance of Rs.44,933/- u/s. 14A read with Rule 8D of the Income-tax Rules, 1962 (hereinafter referred to as the "Rules").

5. At the outset, the Ld. AR submitted that in this assessment year, the assessee did not earn any exempt income, therefore, according to him, no disallowance u/s. 14A of the Act was warranted and for that he relied on the decision of the Hon'ble Delhi High Court in the case of Chem Investment Ltd. Vs. CIT 378 ITR 33(Del). Since we have already remanded the aforesaid issue to the AO, we set aside the impugned order of the Ld. CIT(A) on this issue and direct the AO to examine/verify as to whether the assessee's claim that it has not received any exempt income is correct or not. And on verification if the AO finds that assessee has not earned any exempt income, then no disallowance u/s. 14A read with Rule 8D is warranted. With the aforesaid observation, we remand this matter back to the file of the AO for the limited purpose of verification and to decide in accordance to law. And the AO to carry out the verification as early as possible and preferably not later than three (3) months from receipt of this order.

6. In the result, the appeal of assessee is partly allowed for statistical purposes.

Order is pronounced in the open court on 3rd September, 2021.

Sd/-
(P. M. Jagtap)
Vice President

Sd/-
(A. T. Varkey)
Judicial Member

Dated: 3rd September, 2021

Jd, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s. Martina Cotton Industries Pvt. Ltd., C/o, Rajesh Mohan & Associates, Unit No. 18, 5th floor, Bagati House, 34 Ganesh Chandra Avenue, Kolkata-700 013.
2. Respondent – ITO, Ward-7(1), Kolkata.
3. CIT(A)-15, Kolkata (sent through e-mail)
4. CIT, Kolkata.
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Senior Private Secretary/DDO
ITAT, Kolkata Benches, Kolkata
